Remarks

Applicant thanks the Examiner for kindly granting his attorney, Allison Johnson, the courtesy of an interview on Friday, July 8, 2005. No agreement was reached during the interview.

Applicant requests that the next action include an indication to the effect that Group I includes claims 1-40, and Group II includes claim 41.

Applicant again notes that there is no outstanding rejection of claim 39. Accordingly, Applicant submits that claim 39 is in condition for allowance and respectfully requests that the next action indicate the same.

Claims 1-10, 18-20, 26-30, 32-34, 37, 42, and 43 stand rejected under 35 U.S.C. § 102(b) over Chimielewski U.S. 6,068,620 (the '620 patent).

The '620 patent discloses a disposable absorbent article that includes an absorbent core that includes a laminate of three layers in which the central absorbent layer includes fibers and superabsorbent polymer.

Claim 1 is directed to a disposable diaper having a core that includes a composite that includes superabsorbent polymer, and a high loft nonwoven web impregnated with the superabsorbent polymer such that superabsorbent polymer is present throughout the three dimensional matrix of the nonwoven web, the superabsorbent polymer having been formed in situ. The '620 patent does not teach a high loft nonwoven web. The '620 patent also fails to teach a nonwoven web impregnated with superabsorbent polymer. The '620 patent further fails to teach a nonwoven web impregnated with superabsorbent polymer formed in situ such that superabsorbent polymer is present throughout the three dimensional matrix of the nonwoven web. Instead the '620 patent discloses a laminate that includes a central absorbent layer (e.g., 340a) formed by combining particulate superabsorbent polymer and fibers, and then forming a layer from the mixture. The resulting layer of the '620 patent laminate includes discrete superabsorbent particles strewn throughout the layer. The presence of the superabsorbent polymer as discrete, individual superabsorbent particles in the layer of the '620 patent does not constitute an impregnate of superabsorbent polymer. To reach a conclusion to the contrary, requires reading the limitation "impregnated" out of claim 1. It is well settled legal precedent that reading a limitation out of a claim is improper. See, e.g., *Ethicon Endo Surgery, Inc. v.*

U.S. Surgical Corp., 93 F.3d, 1572, 1582 (Fed. Cir. 1996). Thus, since the '620 patent fails to teach a high loft nonwoven web impregnated with a superabsorbent polymer, the '620 patent fails to teach each and every element of claim 1. Accordingly, the '620 patent does not anticipate the disposable diaper of claim 1.

The May 18, 2005 Office action implies that the process language present in claim 1 is not relevant to the patentability determination of claim 1. However, process language in an article claim cannot be ignored if it imparts structure to the article. The MPEP states,

> The structure implied by the process steps should be considered when assessing the patentability of product-by-process claims especially when the product can only be defined by the process steps by which the product is made or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product.

MPEP 2114 *citing In Re Garnero*, 412 F.2d 276, 279 (CCPA 1979). The process language of claim 1 that is at issue states, "said superabsorbent polymer having been formed in situ." A superabsorbent polymer forms through crosslinking. A superabsorbent polymer formed in situ in a nonwoven web forms on and around the fibers with which a superabsorbent polymer precursor composition is in contact, and in interstices between fibers of the web where the superabsorbent polymer precursor composition also resides. The language, "a high loft nonwoven web impregnated with a superabsorbent polymer," taken in conjunction with the language, "said superabsorbent polymer having been formed in situ," thus imparts distinctive structural characteristics to the composite of claim 1. Therefore, the process language of claim 1 cannot be ignored. Because the '620 fails to teach a high loft nonwoven web impregnated with a superabsorbent polymer formed in situ, the '620 patent fails to teach the composite of claim 1. The rejection of claim 1 under 35 U.S.C. § 102(b) over the '620 patent thus is unwarranted and must be withdrawn.

Claims 1-10, 18-20, 26-30, 32-34, 36, 37, 40, 42, and 43, are distinguishable under 35 U.S.C. § 102(b) over the '620 patent for at least the same reasons set forth above in distinguishing claim 1.

Claim 42 is further distinguishable for at least the following additional reasons. Claim 42 depends from claim 1 and further requires the fibers of the high loft nonwoven web to consist of synthetic polymer. As indicated above, the '620 patent does not teach a high loft nonwoven web. The '620 patent also does not teach a high loft nonwoven whose fibers consist of synthetic polymer. The '620 patent further fails to teach a high loft nonwoven whose fibers consists of synthetic polymer and that is impregnated with a superabsorbent polymer formed in situ. Thus the '620 patent fails to teach required elements of the diaper of claim 42. For at least these additional reasons, the rejection of claim 42 under 35 U.S.C. § 102(b) over the '620 patent is unwarranted and must be withdrawn.

Claim 43 is further distinguishable over the '620 patent for at least the following additional reasons. Claim 43 depends from claim 1 and further requires the fibers of the high loft nonwoven web to consist of synthetic polymer selected from the group consisting of polyester, polypropylene, polyethylene, polyolefin, polyamide, polyurethane, polyacrylonitrile, and combinations thereof. The '620 patent does not teach a high loft nonwoven whose fibers consist of synthetic polymer selected from the group consisting of polyester, polypropylene, polyethylene, polyolefin, polyamide, polyurethane, polyacrylonitrile, and combinations thereof, and that is impregnated with a superabsorbent polymer formed in situ from an aqueous superabsorbent polymer composition. Thus the '620 patent fails to teach required elements of the diaper of claim 43. For at least these additional reasons, the rejection of claim 43 under 35 U.S.C. § 102(b) over the '620 patent is unwarranted and must be withdrawn.

Should the rejection of claims 42 and 43 under 35 U.S.C. § 102(b) over the '620 patent be maintained, Applicant respectfully requests that the next action indicate, by reference to column and line number, the location in the '620 patent of the requisite teachings.

Claims 11-17, 21-25, 31, and 38 stand rejected under 35 U.S.C. § 103 over the '620 patent.

The rejection of is based upon the above-refuted premise that the '620 patent teaches the disposable article of claim 1. Since this premise has been refuted, the rejection of claims 11-17, 21-25, 31, and 38 under 35 U.S.C. § 103 over the '620 patent

cannot stand and must be withdrawn for at least the same reasons set forth above in distinguishing claim 1.

Claim 35 stands rejected under 35 U.S.C. § 103 over the '620 patent in view of U.S. Patent No. 5,788,684 (the '684 patent).

The discussion regarding the '620 patent set forth above is incorporated herein.

The '684 patent describes a liquid absorbing article that includes holes that extend through the depth of the absorbent core. The holes are at least partially filled with a high absorbency material.

Claim 35 depends from claim 1 and further recites that the core includes a plurality of strips of the composite. The deficiencies of the '620 patent set forth above are incorporated herein. The '684 patent does not cure the deficiencies of the '620 patent. The '684 patent does not teach or suggest a high loft nonwoven web impregnated with a superabsorbent polymer formed in situ. Thus, a *prima facie* case of obviousness of claim 35 has not been made. Accordingly, the rejection of claim 35 under 35 U.S.C. § 103 over the '620 patent in view of the '684 patent is unwarranted and must be withdrawn.

The claims now pending in the application are in condition for allowance and such action is respectfully requested. The Examiner is invited to telephone the undersigned should a teleconference interview facilitate prosecution of this application.

Please charge any additional fees owing or credit any over payments made to Deposit Account No. 06-2241.

Respectfully submitted,

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